

1 LAURA VARTAIN HORN (SBN: 258485)

2 laura.vartain@kirkland.com

3 **KIRKLAND & ELLIS LLP**

555 California Street, 30th Floor

San Francisco, CA 94104

Telephone: (415) 439-1625

5 ALLISON M. BROWN (*Pro Hac Vice* admitted)

allison.brown@kirkland.com

6 JESSICA DAVIDSON (*Pro Hac Vice* admitted)

jessica.davidson@kirkland.com

601 Lexington Avenue

New York, NY 10022

Telephone: (212) 446-4723

Counsel for Defendants

UBER TECHNOLOGIES, INC.,

RASIER, LLC, and RASIER-CA, LLC

[Additional Counsel Listed on Following Pages]

14 **UNITED STATES DISTRICT COURT**

15 **NORTHERN DISTRICT OF CALIFORNIA**

16 **SAN FRANCISCO DIVISION**

17 IN RE: UBER TECHNOLOGIES, INC.,
18 PASSENGER SEXUAL ASSAULT
19 LITIGATION,

Case No. 3:23-md-03084-CRB

**DEFENDANTS' OPPOSITION TO
PLAINTIFF B.L.'S MOTION FOR
LEAVE TO AMEND BELLWETHER
COMPLAINT**

20 This Document Relates to:

21 *B.L. v. Uber Technologies, Inc., et al.*, No.
22 24-cv-7940

Judge: Hon. Charles R. Breyer
Date: October 3, 2025
Time: 10:00 AM
Courtroom: Courtroom 6 – 17th Floor (by
Zoom)

24 SABRINA H. STRONG (SBN: 200292)

sstrong@omm.com

25 JONATHAN SCHNELLER (SBN: 291288)

jschneller@omm.com

26 **O'MELVENY & MYERS LLP**

400 South Hope Street, 19th Floor

Los Angeles, CA 90071

1 Telephone: (213) 430-6000
2 Facsimile: (213) 430-6407

3 PATRICK L. OOT, JR. (*Pro Hac Vice* admitted)
4 oot@shb.com

SHOOK, HARDY & BACON, LLP

5 1800 K Street NW, 10th Floor
6 Washington, DC 20006
7 Telephone: (202) 783-8400
8 Facsimile: (202) 783-4211

9 ALYCIA A. DEGEN (SBN: 211350)
10 adegan@shb.com

11 MICHAEL B. SHORTNACY (SBN: 277035)
12 mshortnacy@shb.com

13 2121 Avenue of the Stars, Suite 1400
14 Los Angeles, CA 90067
15 Telephone: (424) 285-8330
16 Facsimile: (424) 204-9093

17 CHRISTOPHER V. COTTON (*Pro Hac Vice* admitted)
18 ccotton@shb.com

19 255 Grand Boulevard
20 Kansas City, MO 64108
21 Telephone: (816) 474-6550
22 Facsimile: (816) 421-5547
23
24
25
26
27
28

TABLE OF CONTENTS

	Page
INTRODUCTION	1
BACKGROUND	1
LEGAL STANDARD.....	2
ARGUMENT	2
I. PLAINTIFF’S CONCLUSORY ALLEGATIONS FAIL TO STATE A RATIFICATION CLAIM.....	2
II. ALLOWING PLAINTIFF TO AMEND HER COMPLAINT WOULD RESULT IN UNDUE PREJUDICE.	4
CONCLUSION	5

TABLE OF AUTHORITIES

Page

Cases

<i>Berger v. Southern Pacific Co.</i> , 144 Cal. App. 2d 1 (1956).....	4
<i>Bowoto v. Chevron Texaco Corp.</i> , 312 F. Supp. 2d 1229 (N.D. Cal. 2004)	3
<i>Edmunds v. Atchison, Topeka & Santa Fe Ry. Co.</i> , 174 Cal. 246 (1917)	3, 4
<i>Entangled Media, LLC v. Dropbox Inc.</i> , 348 F.R.D. 649 (N.D. Cal. 2025).....	4
<i>Fischl v. Pac. Life Ins. Co.</i> , 94 Cal. App. 5th 108 (2023)	3
<i>Foman v. Davis</i> , 371 U.S. 178 (1962).....	2
<i>Garcia ex rel. Marin v. Clovis Unified Sch. Dist.</i> , 627 F. Supp. 2d 1187 (E.D. Cal. 2009).....	3
<i>In re Cloudera, Inc.</i> , 121 F.4th 1180 (9th Cir. 2024)	2
<i>Lathus v. City of Huntington Beach</i> , 56 F.4th 1238 (9th Cir. 2023)	2
<i>Miller v. Rykoff-Sexton, Inc.</i> , 845 F.2d 209 (9th Cir. 1988).....	2
<i>Morongo Band of Mission Indians v. Rose</i> , 893 F.2d 1074 (9th Cir. 1990).....	4
<i>Rakestraw v. Rodrigues</i> , 500 P.2d 1401 (Cal. 1972)	3
<i>Saes Getters S.p.A. v. Aeronex, Inc.</i> , 219 F. Supp. 2d 1081 (S.D. Cal. 2002).....	4
<i>Thomas v. Regents of the Univ. of Cal.</i> , 97 Cal. App. 5th 587 (2023)	3
Rules	
Fed. R. Civ. Pro. 15(a)(2).....	2

INTRODUCTION

Plaintiff B.L.’s motion to amend her Complaint to add a ratification theory of vicarious liability should be denied as both futile and unduly prejudicial. B.L.’s proposed amendment would add two sentences to her Complaint, which allege, in conclusory terms, that Defendants permitted the independent driver who allegedly assaulted her to offer rides through the Uber platform in Colombia after law enforcement had notified them of the alleged assault. The amendment fails on its face to state a ratification claim. Plaintiff alleges nothing about what law enforcement told Uber or Uber’s response—she does not allege, for instance, that Defendants failed to deactivate the driver in the United States or otherwise failed to investigate. Without such allegations, the proposed amendment cannot support a plausible inference that Uber knowingly and voluntarily adopted the driver’s prior conduct as its own.

The Court should thus dismiss the proposed amendment as futile. Separately, the Court should reject the proposed amendment because it would result in undue prejudice, significantly complicating this litigation by requiring burdensome last-minute discovery overseas with scant connection to this case.

BACKGROUND

Plaintiff characterizes the lead-up to her proposed amendment as a series of “inexplicabl[e]” delays and intentional “obfuscation.” Pl.’s Mot. at 1, 3. The reality is more straightforward: after identifying a production error, Defendants promptly corrected their production, investigated the issue, and, upon discovering additional relevant documents revealing an account for the driver Edwin Castaneda Orozco in Colombia, promptly disclosed the documents and additional account information, too. Defendants then offered 30(b)(6) witnesses to testify to both the production process and its substantive contents.

On March 26, 2025, Plaintiff served Defendants with requests for production seeking all accounts related to Orozco. Luther Decl. ¶ 2. Between June 13, 2025 and July 2, 2025, Defendants produced responsive documents. *Id.* ¶ 5. Eight days after completing the production, on July 10, Defendants discovered a production error: Defendants inadvertently produced a

document that incorrectly linked Orozco to other independent drivers' account information, one of whom remained active on the Uber platform. *Id.* ¶ 7. Defendants promptly disclosed the error and provided Plaintiff with corrected information. *Id.*; see Pl.'s Ex. G.

While investigating the production error, Defendants uncovered separate documents suggesting that Orozco had a different account with the Uber platform in Colombia. See Pl.'s Ex. F. Defendants produced corrected information to Plaintiff on July 22, 2025, Luther Decl. ¶ 9, and the parties filed a joint discovery letter about the production issue the next day, see Dkt. 3557. After Judge Cisneros ordered additional discovery, Defendants tendered 30(b)(6) witnesses to testify regarding the discovery issues and Orozco's Colombia account. See Luther Decl. ¶ 10; see, e.g., Pl.'s Ex. F.

Based on the documents and testimony Defendants provided, Plaintiff B.L. now moves to add a ratification claim to her Amended Complaint.

LEGAL STANDARD

Courts must deny a motion to amend when "it is clear that granting leave to amend would have been futile." *In re Cloudera, Inc.*, 121 F.4th 1180, 1190 (9th Cir. 2024) (quoting *Lathus v. City of Huntington Beach*, 56 F.4th 1238, 1243 (9th Cir. 2023) (discussing Fed. R. Civ. Pro. 15(a)(2))). The "test to be applied when determining the legal sufficiency of a proposed amendment is identical to the one used when considering the sufficiency of a pleading challenged under Rule 12(b)(6)." *Miller v. Rykoff-Sexton, Inc.*, 845 F.2d 209, 214 (9th Cir. 1988). Courts likewise may deny leave to amend where a proposed amendment would result in "undue prejudice to the opposing party." *Foman v. Davis*, 371 U.S. 178, 182 (1962).

ARGUMENT

I. PLAINTIFF'S CONCLUSORY ALLEGATIONS FAIL TO STATE A RATIFICATION CLAIM.

Plaintiff's proposed amendment fails to allege the basic facts necessary to state a ratification claim. The Court has clarified that "ratification may be inferred from the fact that the employer, after being informed of the employee's actions, *does not fully investigate and fails to repudiate* the employee's conduct by redressing the harm done and punishing or discharging the

employee.” PTO 28 at 23 (quoting *Garcia ex rel. Marin v. Clovis Unified Sch. Dist.*, 627 F. Supp. 2d 1187, 1202 (E.D. Cal. 2009) (emphasis added)); see *Thomas v. Regents of the Univ. of Cal.*, 97 Cal. App. 5th 587, 618-19 (2023) (The “theory of ratification is generally applied where an employer *fails to investigate or respond* to charges that an employee committed an intentional tort[.]”) (citation omitted) (emphasis added).

But the proposed amendment makes no assertions at all about Defendants’ failure to respond or investigate after receiving notice from law enforcement. It alleges neither that Defendants failed to adequately investigate nor that they failed to deactivate the driver in the United States (upon notice) and in Colombia (upon discovery of Orozco’s account). It likewise does not allege that Defendants had “knowledge of the material facts.” *Fischl v. Pac. Life Ins. Co.*, 94 Cal. App. 5th 108, 129 (2023); see also *Bowoto v. Chevron Texaco Corp.*, 312 F. Supp. 2d 1229, 1247 (N.D. Cal. 2004) (“Ratification is demonstrated through *knowing acceptance* after the fact by the principal of an agent’s actions.”) (emphasis added). Its threadbare allegations thus plead no facts plausibly supporting an “essential” element of Plaintiff’s ratification theory: that Defendants’ post-incident conduct was “truly voluntary in character” and “inconsistent with any reasonable intention on [Defendants’] part, other than that [they] intended approving and adopting it.” *Rakestraw v. Rodrigues*, 500 P.2d 1401, 1405 (Cal. 1972) (citations omitted).

Absent such basic allegations, a jury cannot “fairly infer[]” that Defendants formed “an intention to consent to” the driver’s alleged bad acts, or to “adopt” or “authorize” such acts “as [their] own.” *Id.* at 1404-05. Take *Edmunds v. Atchison, Topeka & Santa Fe Ry. Co.*, 174 Cal. 246 (1917). There, the California Supreme Court considered jury instructions asserting that ratification is established where (1) “the attention of defendant was called” to its employee’s alleged assault, and (2) defendant nevertheless “retained [the employee] in its employ.” *Id.* at 249. The Court rejected the instruction on multiple grounds, including because it was not “a correct statement of the law” of ratification. *Id.* While “failure to discharge” after receipt of notice “may be evidence tending to show ratification,” the court explained, “omission to dispense with the services of the offender, standing by itself and unsupported by any other circumstances

1 indicating the employer’s approval of his course, *is never sufficient to establish ratification.*” *Id.*
 2 (emphasis added). Here, Plaintiff does not even allege those insufficient facts: She does not state
 3 what law enforcement reported to Defendants, does not allege that Defendants failed to
 4 investigate and does not allege that Defendants failed to “discharge” Orozco by deactivating his
 5 account in the United States. Because Plaintiff’s two-sentence amendment fails to plead key
 6 elements of her ratification claim, her motion to amend should be denied as futile.

7 **II. ALLOWING PLAINTIFF TO AMEND HER COMPLAINT WOULD RESULT IN**
 8 **UNDUE PREJUDICE.**

9 Permitting Plaintiff’s proposed amendment would also unduly prejudice Defendants by
 10 requiring them to prepare a defense against alleged conduct in Colombia when discovery is nearly
 11 complete. The proposed claim raises a number of new issues that may require cross-border
 12 discovery, including, among other things, how the driver obtained access to the platform in
 13 Colombia and the relationship between U.S. and Colombian operations. But “the Ninth Circuit
 14 has found . . . substantial prejudice where the claims sought to be added ‘would have greatly
 15 altered the nature of the litigation and would have required defendants to have undertaken, at a
 16 late hour, an entirely new course of defense.’” *Saes Getters S.p.A. v. Aeronex, Inc.*, 219 F. Supp.
 17 2d 1081, 1086 (S.D. Cal. 2002) (quoting *Morongo Band of Mission Indians v. Rose*, 893 F.2d
 18 1074, 1079 (9th Cir. 1990)). Further, “[s]uch prejudice may result from reopening discovery or
 19 conducting supplemental discovery, which may cause delays and require the other party to
 20 consider new legal theories in a short period of time.” *Entangled Media, LLC v. Dropbox Inc.*,
 21 348 F.R.D. 649, 656 (N.D. Cal. 2025) (citation omitted). Plaintiff has a variety of claims pending
 22 against Defendants, including two vicarious liability claims based on the Court’s application of
 23 *Berger v. Southern Pacific Co.*, 144 Cal. App. 2d 1 (1956). Particularly given the threadbare
 24 nature of the proposed ratification allegations, the burden of investigating and litigating a new
 25 claim about alleged conduct and operations in another country near the close of discovery vastly
 26 outweighs any marginal benefit Plaintiff would derive by asserting a third theory of vicarious
 27 liability.
 28

CONCLUSION

Because Plaintiff's proposed amendment fails to plausibly allege how any Defendant ratified the alleged assailant's actions, and because the amendment would require Defendants to investigate and defend a new factual theory as summary judgment approaches, the Court should deny Plaintiff B.L.'s motion to amend.

Dated: September 5, 2025

O'MELVENY AND MYERS LLP

By: /s/Jonathan Schneller
Jonathan Schneller

KIRKLAND & ELLIS LLP
LAURA VARTAIN HORN
ALLISON M. BROWN
JESSICA DAVIDSON

O'MELVENY & MYERS LLP
SABRINA H. STRONG
JONATHAN SCHNELLER

**SHOOK, HARDY & BACON,
LLP**
PATRICK LEO OOT, JR.
ALYCIA A. DEGEN
MICHAEL B. SHORTNACY
CHRISTOPHER V. COTTON

Counsel for Defendants